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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184197
Party	Plaintiff United Parcel Service of America, Inc.
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Date	07/27/2009
Attachments	HybridGreenReply--Extend.pdf (6 pages)(15348 bytes) ExhA.pdf (1 page)(5950 bytes) HybridGreenReply-ExhA.pdf (1 page)(10334 bytes) ExhB.pdf (1 page)(5930 bytes) HybridGreenReply--ExhB.pdf (1 page)(12002 bytes)

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UNITED PARCEL SERVICE OF AMERICA, INC.,	:	
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Opposer,	:	Opposition No. 91184197
	:	
v.	:	
	:	
POWERTECH INDUSTRIAL CO., LTD.,	:	
	:	
Applicant.	:	
	:	
	X	

**REPLY BRIEF IN SUPPORT OF OPPOSER’S
MOTION TO EXTEND TESTIMONY PERIODS**

Pursuant to Section 2.127(a) of the Trademark Rules of Practice, Opposer United Parcel Service of America, Inc. (“UPS”) respectfully submits this reply in support of its Motion to Extend Testimony Periods (the “Motion”). For the reasons set forth below and in Opposer’s Motion, the Motion should be granted.

Argument in Reply

I. UPS Properly Served Discovery on Applicant

Applicant contends that UPS’s discovery requests “were not properly addressed to Applicant’s attorneys.” Applicant’s Response in Opposition, p. 2. This is incorrect. To the contrary, UPS served its discovery requests on the very e-mail address presented by Applicant’s counsel in the email in which counsel agreed to accept service by email. Specifically, Applicant’s counsel Mort Rosenberg agreed to accept service of discovery by e-mail. See

Exhibit A. Mr. Rosenberg's e-mails to UPS -- including Exhibit A -- were sent from the email address: "Mort Rosenberg MortR@rkllpatlaw.com on behalf of RKL rkl@rkllpatlaw.com." Id.

On January 22, 2009, prior to the close of discovery, UPS served discovery requests on Applicant by e-mailing them to Mr. Rosenberg at MortR@rkllpatlaw.com. See Exhibit B. UPS acted reasonably in serving through this e-mail address because, as explained above, it appears as the originating e-mail address in correspondence from Applicant's counsel. Importantly, UPS did not receive an auto-reply message stating that its e-mail by which it served the discovery requests was undeliverable or otherwise failed to reach its destination.

A significant portion of Applicant's Response recounts the parties' apparent miscommunication, the specifics of which are ultimately unimportant to the disposition of UPS's Motion. The important -- and undisputed -- fact is that UPS properly served its discovery requests and did not receive Applicant's responses to those discovery requests until almost three months after the close of discovery. UPS required adequate time to review and analyze the impact of those responses, which were significant enough to provide an additional basis for opposition. Accordingly, UPS has sought to extend the testimony periods.

The propriety of UPS's conduct is further evidenced by its good faith cooperation with Applicant weeks later when Applicant claimed not to have received UPS's discovery requests. UPS neither threatened nor filed a motion to compel, or took any other action necessitating Board intervention. Rather, as both parties have explained in their papers, UPS simply agreed to serve duplicate copies of its discovery requests and to accept late responses from Applicant. UPS's cooperation is no grounds for denying the instant request.

II. UPS Has Not Acted in Bad Faith or Been Negligent

Applicant's Response repeatedly (and wrongly) accuses UPS of negligence and bad faith. Contrary to Applicant's hyperbole, UPS has merely acted in response to Applicant's tardy discovery responses and UPS's discovery of a simple docketing error. UPS's conduct in this matter has been diligent and aboveboard.

As set forth in its Motion, on the last day of the testimony period, counsel for UPS realized that it had improperly docketed the date on which that period would close. Of course, it would not be possible to schedule and give appropriate notice of UPS's taking testimony on that same day. UPS immediately contacted Applicant's attorney to seek consent for extension of the testimony periods. Applicant's counsel stated that, due to the time difference between the United States and Taiwan, he did not expect to be able to obtain authorization from his client to consent to the extension prior to the close of UPS's testimony period.

Because UPS had to act prior to the expiration of its testimony period, UPS then filed its Motion without Applicant's consent. In that Motion, UPS accurately represented to the Board that Applicant had neither consented to, nor denied consent to, the Motion. UPS has in no way, as Applicant's Response contends, planned its conduct "with the full realization" that Applicant's attorney could not receive a timely response from his client or drafted its Motion to assign "culpability" to the Applicant. Rather, UPS responded to a docketing error in a professional manner and accurately presented the factual circumstances behind its Motion to the Board.

III. UPS Has Not Abused The Privilege of Extensions

Applicant contends that UPS has abused the privilege of extensions simply by filing its motion to extend the testimony periods on the final day of UPS's testimony period. UPS filed its motion within the time period permitted by Rule 2.116(a) of the Trademark Rules of Practice. Moreover, this is only the second extension of time sought by either party in this proceeding. The only other extension of time in this proceeding was sought with the consent of both parties in order to accommodate Applicant's request for additional time to respond to UPS's discovery requests. Applicant does not cite -- and indeed cannot cite -- any authority for the proposition that such standard practices are abusive.

IV. Applicant Will Not Be Prejudiced By An Extension

An extension of the testimony periods will not prejudice Applicant in any way. Applicant has presented no argument to the contrary. Instead, in Applicant's Response, Applicant cites only the potential impact on Applicant of a different motion filed by UPS. That motion -- UPS's Motion to Amend the Notice of Opposition -- is a separate and independent matter. UPS submits that the Board should consider the instant motion on its own merits and conclude it poses no risk of prejudice to Applicant, which will still have its entire testimony period in which to present its case.

For the reasons set forth above and in Opposer's Motion, UPS respectfully requests that the Board grant its Motion.

Dated: July 27, 2009

By: /John P. Sheesley/

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John P. Sheesley

Elizabeth M. Fox

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Attorneys for Opposer

UNITED PARCEL SERVICE OF
AMERICA, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Reply Brief in Support of Opposer's Motion to Extend Testimony Periods was served this day via electronic mail, pursuant to agreement, addressed to:

Morton J. Rosenberg
ROSENBERG, KLEIN AND LEE
rkl@rkpatlaw.com

This 27th day of July, 2009.

/John P. Sheesley/

John P. Sheesley

EXHIBIT A

Sheesley, John

From: Mort Rosenberg [MortR@rkllpatlaw.com] on behalf of RKL [rkl@rkllpatlaw.com]
Sent: Wednesday, August 27, 2008 4:40 PM
To: Sheesley, John
Subject: OPPOSITION 91184197
Attachments: SIGNED INITIAL DISCLOSURE 8-27-2008.PDF

8/27/2008

RKL REF. MR2349-1569/OPP

DEAR MR. SHEESLEY:

ATTACHED IS APPLICANT'S RESPONSE TO THE INITIAL DISCLOSURES DUE WHICH IS ALSO BEING SENT BY POSTAL SERVICE.

MAY I SUGGEST THAT WE AGREE TO ACCEPT SERVICE FROM EACH OTHER BY E-MAIL DURING THESE PROCEEDINGS.

VERY TRULY YOURS
MORTON J. ROSENBERG

7/20/2009

EXHIBIT B

Fox, Elizabeth

From: Fox, Elizabeth
Sent: Monday, January 26, 2009 5:03 PM
To: mortr@rkllpatlaw.com
Cc: Sheesley, John
Subject: UPS v. Powertech Industrial Co., Ltd.: Opposition No. 91184197

Attachments: DOC001.PDF; DOC001.PDF; DOC001.PDF

Mort,

Attached please find Opposer's First Requests to Applicant for the Production of Documents and Things, Opposer's First Requests for Admission by Applicant, and Opposer's First Interrogatories to Applicant.

Best regards,
Elizabeth



DOC001.PDF (178 KB)



DOC001.PDF (108 KB)



DOC001.PDF (94 KB)

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